IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 992 of 1992

For Approval and Signature:

HON'BLE MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

STATE OF GUJARAT

Versus

RAJUBHA P GADHVI

Appearance:

1. Criminal Appeal No. 992 of 1992

MR HM PRACHHAK ld. APP for Petitioner No. 1

MR MANOJ N POPAT for Respondent No. 1-3

CORAM : HON'BLE MR.JUSTICE J.R.VORA

Date of decision: 19/02/2004

ORAL JUDGEMENT

This appeal is filed by the State against the judgment and order dated 17.8.1992 of ld. Judicial Magistrate First Class, Bhachau, acquitting the present

respondents-accused in Criminal Case No. 561/1990 for the charges levelled against them under sec. 498A, 323, 506(2) read with sec. 114 of Indian Penal Code and as per Sec. 3 of Dowry Prohibition Act.

Brief facts revealed that the complainant Radhaben, wife of respondent no. 1 - accused no. 1 Rajubha Punabha Gadhavi, filed a complaint before police station that she was staying with her in-laws at Jamnagar in Anand Society along with her husband respondent accused no. 1 and with respondent no. 2- accused no. 2, brother of respondent no. 1 and respondent no. 3 accused no. 3, mother of respondents no. 1 and 2. The marriage took place before three years of filing of the complaint and all the three accused had started torturing and taunting complainant Radhaben on the ground that complainant Radhaben had not taken any dowry with her. She was also frequently beaten by respondents no. 1 and 2. There was a quarrel earlier also and on account of which, Radhaben went to her parental home and after compromise, she was taken back to Jamnagar by accused before six months of filing of the complaint. Thereafter also, the demand of dowry as well as physical beating and oral taunting continued. Ultimately, on 1.5.1990, as a consequence of the cruelty by the accused, accused and complainant at 3.00PM in the afternoon came to village Lakadiya (Kutchh) at the resident of her father and she went inside to meet her parents, whereas her husband respondent no. 1 and respondent no. 2 were standing near the main door outside the house. She requested her father that accused demanded Rs. 20,000/- as a dowry and if that amount is not given to accused, she would be killed. Her father showed his inability to pay that amount. That fact was conveyed by her to respondents no. 1 and 2 and, on hearing this, both of them excited and she was beaten. Ultimately, after leaving her near the house of her father, both the respondents ran away. Complaint came to be filed before the Lakadiya Police Station and ultimately, a charge-sheet was filed against all the three accused. After recording the evidence as adduced by the prosecution and after hearing both the parties, the ld. Judge acquitted all the respondents for the charges levelled against them and hence, this appeal by the State against acquittal.

Ld. APP Mr. HM Prachhak on behalf of State and ld. Advocate Mr. Manoj N. Popat for the respondents were heard at length.

On re-appreciating the evidence of the witnesses, it is clear that the main witnesses are ex. 48

Nagajanbha Bhurabha Gadhavi, father of the complainant and complainant herself. On appreciating the evidence of both these witnesses, it clearly comes out that there are material contradiction and improvement in their deposition as narrated by ld. Magistrate in para-13 of his judgment. Firstly, the complaint came to be lodged on 2.5.1990 i.e. on the next day of the incident and she took medical treatment on 3.5.1990. The doctor has been examined at ex. 64 PW-6 - Vinodkumar Jayramdas Thakkar. The injuries found on the body of Radhaben was on the back and on leg which itself in contradiction of the oral evidence led by the prosecution. Medical evidence is not able to prove the probable age of the injury, while material witness ex. 48 Nagajanbha Bhurabha Gadhavi is examined and considering his evidence, it is found that his evidence is tainted by improvement, not only that, he goes to the extent to say that at the time of incident, he was milking buffalo and, therefore, he could not say how his daughter was beaten by the respondents. In addition to the contradiction brought about by the defence in the evidence of witness Nagajanbhai, the evidence of the complainant as well, is not creditworthy on account of two facts; firstly, the FIR has been filed at Lakadiya Police Station for the cruelty which was executed by the respondents at Jamnagar and that too, by one day late of the incident which occurred on 1.5.1990. She offered herself for medical treatment on 3.5.1990 and further there are contradiction in her evidence that in original prosecution case, she stated that she talked to her mother about the demand of dowry. While examining before the court, she stated to have a talk with her father about the demand of dowry of Rs. 20,000/-. One more witness, brother of the complainant Govindbha Nagajanbha Gadhavi, Ex. 52, is also not helpful to the prosecution because in his cross-examination, he admitted that he was not present while the incident occurred. So far as the cruelty is concerned, this witness has no personal knowledge. After considering all these evidences together and recording proper reasons in para-13 of the judgment, ld. Judge acquitted the accused. On re-appreciating the evidence, it is found that the reasons recorded by the ld. trial Judge are in any manner not subject to any interference by this court. The appreciation of the evidence by the trial court is without any flow and the conclusion arrived at is based on correct appreciation of the evidence recorded by the trial court. In this view of the matter, the judgment and order impugned in this appeal is not required to be interfered with.

For the above stated reasons, this appeal filed

by the State against the acquittal of the respondents stands dismissed.

(J.R. VORA, J.)
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